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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 209

MAGNOLIA PETROLEUM COMPANY,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CLAIMS AND BRIEF IN SUPPORT
THEREOF.

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**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF CLAIMS.**

Your petitioner, MAGNOLIA PETROLEUM COMPANY, a Texas corporation, respectfully prays that a writ of certiorari issue to review a judgment (judgment dismissing petitioner's petition entered January 3, 1944, R. 35; order overruling petitioner's motion for new trial entered April 3, 1944, R. 36) of the Court of Claims of the United States entered in a suit there entitled "Magnolia Petroleum Company v. United States of America," number 45678, and in support of its petition shows:

I. Short Statement of the Matter Involved.

Magnolia Petroleum Company, a Texas corporation, petitioner, sued the United States of America in the Court

of Claims of the United States for the recovery of One Hundred Fourteen Thousand Six Hundred and Ninety-five Dollars (\$114,695.00), with interest, which is the sum assessed against petitioner and paid by it as a tax on the transportation of oil and its products by pipe line under Sec. 731 of the Revenue Act of 1932, as amended by Sec. 212, National Industrial Recovery Act, and Public Resolution No. 36, 74th Congress, approved June 28, 1935 (R. 1-11).

Said Sec. 731, which was in effect during the period here involved, reads in part as follows:

Sec. 731. Tax on Transportation of Oil by Pipe Line.

(a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line * * *

(1) A tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.

(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such transportation to be paid by the person furnishing such transportation.

(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4 per centum of such fair charge, to be paid by the person furnishing such transportation.

(b) For the purposes of this section, the fair charge for transportation shall be computed—

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other

pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

That portion of Regulations 42 (Revised October, 1932), promulgated by the Treasury Department on this subject, is set out in the Appendix (pp. 9-11, *infra*).

Magnolia Petroleum Company has its principal office and place of business at Dallas, Texas (R. 41). During all of the time in question, it was engaged in the business of producing, refining and marketing petroleum and petroleum products, and among other properties had a refinery at Beaumont, Texas, with an adjunct thereof at Magpetco, Texas, and an oil and gas lease at Cameron Meadows, located in southern Louisiana (R. 51). Activities at these points are involved in this case. The Cameron Meadows lease is located in southern Louisiana in swampy country and it is necessary to move the oil produced therefrom by barge. The oil as it was produced on the lease was not ready for market and had to be placed in settling tanks where it was treated. From settling tanks the oil was moved to stock tanks from which it was loaded on barges (R. 51-52). Petitioner was not a common carrier and had no pipe line (R. 62-63, 65, 66).

The distribution and amounts (R. 42-43) of the pipe line transportation taxes assessed against petitioner are as follows:

Federal pipe line transportation taxes were assessed against the petitioner on the conveyance or transportation of its own oil (both crude and refined) from its own tanks on its own premises, through its own lines of pipes, into vessels on the river adjoining *a* and *b* below, and into barges on the canals within *c* below, and in sums, as follows:

a. <i>Beaumont Refinery in Texas</i> —	
(1) Taxes and interest paid on the conveyance of refined products into vessels ..	\$74,883.50
(2) Taxes and interest on the conveyance of crude oil into vessels	10,793.10
b. <i>Magpetco Terminal in Texas</i> —	
(3) Taxes and interest on the conveyance of refined products from the Beaumont refinery to the Magpetco terminal, (a distance of 9 miles) and loading the same into vessels	9,531.74
(4) Taxes and interest on the conveyance of crude oil into vessels	17,456.03
c. <i>Cameron Meadows Lease in Louisiana</i> —	
(5) Taxes and interest on the conveyance of crude oil into barges	2,030.63
Total	\$114,695.00

The above-mentioned taxes were assessed for the period January 1, 1933 to April 30, 1937 and were paid (R. 2) as follows:

September 16, 1936	\$938.72
March 5, 1938	76,600.81
March 18, 1938	36,594.10
August 5, 1938	561.37
Total	\$114,695.00

Petitioner filed, on November 1, 1939, its claim for refund in the amount of \$114,695.00 with the Collector of Internal Revenue at Dallas, Texas (Petitioner's "Exhibit A", R. 1, 12A).

The Commissioner of Internal Revenue, in passing on the claim for refund above mentioned, held that the loading of refined products at the Beaumont refinery was *not taxable*, on the ground that no substantial pipe line movement was involved (R. 22). The claim for refund was denied in all other respects, including the gathering and

loading of crude petroleum on the Cameron Meadows lease (R. 22). The Commissioner set out that the latter assessment included the movement from the well to the centralized battery of tanks for treating and the movement from such tanks and the loading of the product into barges (R. 24).

On review, the Chief Counsel of the Bureau of Internal Revenue held that the refund of the taxes assessed against the loading of refined products at Beaumont refinery was not warranted, and the Commissioner thereupon rejected the claim of petitioner in full (R. 26).

The above-mentioned suit in the Court of Claims of the United States followed.

In the trial of the case it was the position of the United States that the activities outlined above constituted taxable "transportation" of oil and its liquid products by pipe line within the purview of Sec. 731 of the Revenue Act of 1932, as amended. Petitioner contended that none of the movements there involved constituted such taxable transportation by pipe line. The judgment of the court was in favor of the United States (R. 35). Thereafter, petitioner filed its Motion for New Trial and for Amendment of Findings. Petitioner's said motion, as stated, was overruled by the court (R. 36).

II. Jurisdiction.

This court has jurisdiction to review the decision of the Court of Claims under the authority of c. 229, Sec. 3, 43 Stat. 939, February 13, 1925, as amended May 22, 1939; c. 140, 53 Stat. 752 (Tit. 28, Sec. 288, U. S. C. A.).

The applicable portion thereof is quoted from Sec. 288(b) as follows:

"In any case in the Court of Claims, including those begun under section 287 of this title, it shall be competent for the Supreme Court, upon the petition of

either party, whether government or claimant, to require by certiorari that the cause be certified to it for review and determination of all errors assigned, with the same power and authority and with like effect as if the cause had been brought there by appeal."

Also the decision in this case is in conflict as to the Cameron Meadows movement with the case of *Jones v. Continental Oil Company*, 141 F. (2d) 923, decided on March 21, 1944, by the United States Circuit Court of Appeals, Tenth Circuit. This case holds that the movement of oil under its original well pressure from the wells through the treating equipment into the storage tanks located in the trunk pipe line is part of the production process and not a taxable gathering movement.

III. Opinion Below.

The opinion of the Court of Claims (R. 28-35) is reported in 53 F. Supp. 231.

IV. Questions Presented.

The ultimate question here presented is whether (a) the loading of refined products at the Beaumont refinery and (b) the gathering and loading of oil at Cameron Meadows is taxable transportation within the purview of Sec. 731 of the Revenue Act of 1932, as amended.

Alternatively, there is a question whether, even if the said movements are held taxable, the rates fixed by the Commissioner of Internal Revenue and used as a basis for the tax were reasonable, as specified by Sec. 731(b) (3).

The questions of fact and of law which are the bases of the errors discussed in detail in the supporting brief may be enumerated as follows:

1. The court below made findings of fact without substantial evidence to sustain them. (See Errors of Fact Nos. 2 and 3 in supporting brief.)
2. The court below erred in failing to make other findings of fact, requested by petitioner, on material issues. (See Errors of Fact Nos. 1, 4, 5, 6, 7, 8, 9 and 10, in supporting brief.)
3. The court erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of refined products at its Beaumont refinery, and erroneously held that the same constituted transportation of oil by pipe line. In so doing, it misinterpreted and misapplied the provisions of Art. 26 of Treasury Regulations 42.
4. The court erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of oil at Cameron Meadows, and erroneously held that the same constituted taxable transportation of oil by pipe line. In so doing it misinterpreted and misapplied the provisions of Art. 26 of Treasury Regulations 42.
5. The court erroneously found, as a matter of law, that the Commissioner, under Sec. 731(b) of the Revenue Act of 1932, was not authorized in this case to determine what would be a reasonable charge upon which to assess the tax.
6. The court erroneously decided, as a matter of law, that the petitioner was not entitled to recover.

V. Reasons Relied On for Allowance of Writ.

The decision below should be reviewed by this court because it is clearly erroneous. The errors committed by the

Court of Claims which are mentioned above are discussed in detail in our supporting brief.

It is of particular importance that this court review the failure of the Court of Claims to follow the clear language of Art. 26 of Reg. 42 applicable to this case. This regulation of the Commissioner was established and was of long standing and had attained the force and effect of law. The Court of Claims ignored this regulation.

VI. Conclusion.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the said judgment and order of the Court of Claims of the United States should be granted.

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